California's restricted materials permit program is the only one of its kind in the country.

Restricted Materials and Permitting

In 1976, the State Attorney General issued an opinion that the pesticide regulatory program had to comply with the California Environmental Quality Act (CEQA) when registering a pesticide or granting a license, permit or certificate. In other words, CEQA required the Department to prepare an environmental impact report (EIR) before registering a pesticide or issuing a permit to use a restricted pesticide. After a specially-convened Environmental Assessment Team determined this was not feasible, legislation was passed (Chapter 308, Statutes of 1978, AB 3765) that provided for an abbreviated environmental review as the functional equivalent to a full-scale EIR. The legislation noted that timeliness in the application of pesticides is paramount to good pest management and that individual permits to apply pesticides must often be issued on short notice, thereby making impractical the lengthy environmental review required in the preparation of an environmental impact report or negative declaration. Among other things, the legislation led to the Department's development of regulations which expanded the scope of the permitting system and placed new responsibilities on the County Agricultural Commissioners.

As a practical matter, the legislation meant that the state pesticide regulatory agency and the County Agricultural Commissioners did not have to prepare an EIR on each activity they approved. However, documentation of environmental impacts, mitigation measures, and alternatives was required.

The criteria to designate a pesticide as a restricted material in California include hazards to public health, farm workers, domestic animals, honeybees, the environment, wildlife, or crops other than those being treated. DPR gives pesticides a restricted designation through regulation. All federally restricted-use pesticides are designated as restricted materials in California by reference in regulation. In addition, California has additional pesticides that DPR has designated as restricted-use. DPR may propose pesticides for designation as restricted materials at any time, often based on a review of data submitted by registrants or information derived from field studies or incident investigations. (For example, pesticides found in ground water from routine agricultural use are designated restricted materials to allow for greater local control over their use.)

DPR designed the restricted material permit program to accommodate widely divergent local needs. Before a farmer or pest control business can buy or use a restricted material (whether federally restricted or California-restricted only), they must be certified by DPR, that is, they must have had specified training in handling and using pesticides. In addition, to buy or use a California-restricted pesticide, a person must obtain a permit from the County Agricultural Commissioner. (Most pesticide products are not restricted materials, and persons using nonrestricted pesticides are not required to obtain a permit.)

The regulations require the CAC to determine if a substantial adverse health or environmental impact will result from the proposed use of a restricted material. If the CAC determines that this is likely, the commissioner may deny the permit or may issue

it under the condition that site-specific use practices be followed (beyond the label and applicable regulations) to mitigate potentially adverse effects. DPR — relying on its scientific evaluations of potential health and environmental impacts — provides commissioners with information in the form of suggested permit conditions. DPR's suggested permit conditions reflect minimum measures necessary to protect people and the environment. The commissioners use this information and their evaluation of local conditions to set site-specific limits on applications. To maintain CEQA equivalency, CACs must have flexibility to restrict use permits to local conditions at the time of the application. Therefore, the commissioners may follow the DPR-provided guidelines, or may structure their own use restrictions.

Permits to apply restricted materials are the functional equivalent of environmental impact reports; therefore, they must be site- and time-specific. The site can be clearly described when the permit is issued. However, since permits are issued for a 12- or 24-month period, and it is not possible to schedule the time of application months in advance, time-specificity is achieved by the grower filing a "notice of intent" (NOI) to apply the pesticide. The NOI must be submitted to the commissioner at least 24 hours before the scheduled application. The notice must describe the site to be treated and the pesticides to be applied. It must also contain information on any changes in the environmental setting (for example, construction of residences or schools, changes in types of crops to be planted) that may have occurred since the permit was issued. This notice allows the commissioner an additional opportunity to review the planned application, and apply additional restrictions if needed.

Agricultural commissioners have the option of issuing multi-year permits to perennial agricultural plantings (such as fruit trees or grapevines), nonproduction agricultural sites, and nonagricultural sites. However, the permittee must immediately notify the commissioner of any changes in the information on the permit (for example, a change in the kind of crops planted, or a newly constructed labor camp or home nearby).

County staff review notices of intent and can halt the proposed application if conditions warrant. County staff make pre-application inspections on at least 5 percent of the use sites identified by permits or notices of intent. These are primarily spot checks to ensure that information contained on the permit is accurate.

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